

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, and
SANDERS ASSOCIATES, INC.,

Plaintiffs,

vs.

APF ET AL.,
BALLY ET AL.,
MONTGOMERY WARD, ET AL.,
K MART COPORATION,
and MATTEL, INC., ET AL.,

Defendants.

DEC 15 1981

Judge George N. Leighton

Civil Action No. 77C3159 ✓
Civil Action No. 78C4951 ✓
Civil Action No. 78C5041 ✓
Civil Action No. 80C2409 ✓
Civil Action No. 80C4124 ✓

DEFENDANT APF'S ANSWERS TO MAGNAVOX'
AND SANDERS' INTERROGATORY NO'S 1-16

Defendant APF responds as follows to Interrogatory No's
1-16 proposed by Plaintiffs MAGNAVOX and SANDERS.

INTERROGATORY NO. 1:

(a) Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 55, 57 or 60-64 thereof is invalid, void, or unenforceable for any reason under 35 U.S.C. §102 or §103? If so, state each and every reason, ground, or basis known to defendant to support each such contention and fully identify each and every item of prior art upon which defendant bases that contention.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, identify each and every item of prior art supporting the contentions stated by defendant in paragraphs 16(a), (b), (e)-(h) and (j), 17, 19, 24, 25 and 35(a)(1) and (5) of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041".

Answer:

(a) As of the date of the Answers to this Interrogatory, APF has not, as yet, completed its discovery investigation as to the validity of each of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64. However, with respect to APF's investigation to date, APF hereby identifies the following specific items of prior art known to APF as of this date upon which it will support its contention under 35 U.S.C. §103:

1. All prior art made of record in actions previously involving Plaintiffs, including The Magnavox Company, et al. v. Bally Manufacturing Corporation, et al., Civil Action No. 74C1030, The Magnavox Company, et al. v. Seeburg Industries, Inc., et al., Civil Action No. 74C2510, The Magnavox Company, et al. v. Sears Roebuck & Co., Civil Action No. 75C3153 and Atari Inc. v. The Magnavox Company, et al., Civil Action No. 75C3933.

2. U.S. Letters Patent No. 3,135,815 issued to Fritz Speigel.

3. The video tennis game of Brookhaven National Laboratories publicly used and displayed in 1958 and 1959.

4. The video game set forth in the Seimen's brochure dated March, 1960.

(b) See Answer to Interrogatory No. 1(a).

INTERROGATORY NO. 2:

Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 thereof is invalid, void or unenforceable for any reason under 35 U.S.C. §103? If so, state each and every reason, ground, or basis

known to defendant to support each such contention including a statement of what defendant contends is the art to which the subject matter patented in the patent in suit pertains and what defendant contends was the level of skill of a person of ordinary skill in the art at the times the invention of the patent in suit was made and the application for the original patent in suit was filed.

Answer:

APF has not as yet completed its investigation with respect to claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64. However, to the extent that APF has completed its investigation to date, it is the contention of APF that the level of skill of a person in the art is represented not only by the expressed teachings of the prior art identified in response to Interrogatory No. 1(a), but furthermore the level of skill in the art is further represented as follows:

1. Persons at Messerschmidt Bolkow-Blohm, in West Germany, at the time of the development of the video game described and claimed in the Spiegel patent recognized the play value and commercial potential of the invention and considered the manufacture of games thereunder. The decision not to manufacture video games under the Spiegel patent, but only flight simulators, was based upon MBB's involvement in the weapons industry and their lack of any involvement in consumer electronics.

2. Work surrounding the Seimen's 2002 digital computer demonstrated that games upon a video monitor wherein a hit spot and a hitting spot were utilized and wherein coincidence between a hitting spot and a hit spot were detected and distinct motion was created, clearly evidences the skill of the art in May, 1960.

3. The inventive activities of personnel at Brookhaven National Laboratories in 1958 and 1959 establishes that a game involving a hit spot, a hitting spot, distinct motion with respect to coincidence between a hit spot and a hitting spot and manual adjustment of a hit spot were all well known concepts and principles in the art in 1958 and 1959 and were well within the scope of those persons having this information before them.

INTERROGATORY NO. 3:

(a) Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 44, 45, 51, 52, 54, 57 or 60-64 is invalid, void or unenforceable for any reason under 35 U.S.C. §112? If so, state each and every reason, ground, or basis known to defendant to support each such contention, including a statement of each and every alleged deficiency or omission in the written description of the invention in the patent in suit and why such alleged deficiency or omission would prevent any person skilled in the art to which the invention of the patent in suit pertains or is not nearly connected from making and using the same, each mode of carrying out the invention of the patent in suit which was contemplated by the inventor named in the patent as better than the mode or modes set forth therein, and each ambiguity, unclarity, or other manner in which the claims of the patent in suit fail to particularly point out or distinctly claim the subject matter which the inventor regarded as his invention, and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, state each and every reason, ground, or basis known to defendant to support the contentions stated by defendant in paragraphs 16(c) and (d) of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041", and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

Answer:

(a) To the extent that APF has completed its investigation of grounds or reasons under 35 U.S.C. §112, it is the contention of APF that the claims of the patent in suit and the

descriptions supporting said claims fails to particularly point out or describe the meaning of the words "distinct motion" as set forth in the claims alleged to infringe the patent in suit.

(b) See Answer to Interrogatory No. 3(a).

INTERROGATORY NO. 4:

(a) Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 is invalid, void, or unenforceable for any reason under 35 U.S.C. §251 or §252? If so, state each and every reason, ground, or basis known to defendant to support such contentions and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, state each and every reason, ground, or basis known to defendant to support the contentions stated by defendant in paragraphs 20(a)-(d), 23, and 35(a)(6) of the "Amended Complaint in Civil Action No. 78 C 5041", and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

Answer:

(a) APF has not as yet concluded discovery or other investigations with respect to those reasons under 35 U.S.C. §251 or §252 that may invalidate, render void, or render unenforceable the patent in suit under 35 U.S.C. §251 or §252 and, therefore, at this stage is unable to identify the reasons, grounds, or basis in support of paragraphs 20(a)-(d), 23, and 35(a)(6) of the Amended Answer and Counterclaims of APF Electronics Inc. However, Plaintiff will be provided with such information relative thereto promptly upon APF's completion of discovery directed to this issue.

(b) See Answer to Interrogatory No. 4(a).

INTERROGATORY NO. 5:

(a) Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, or 60-64 thereof is or at any time was invalid, void, or unenforceable against defendant or others for any reasons other than those stated in defendant's responses to interrogatories 1-4 hereof? If so, state in detail each and every such other contention, state each and every reason, ground, or basis known to defendant to support each such contention, and identify every document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, state each and every reason, ground, or basis known to defendant to support the contentions stated by defendant in paragraphs 16(i), (k) and (l), 24, 25, 26, 27, 28, and 29 of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041", and identify every document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis, and identify each of the "other material facts" known to defendant and supporting the contentions of paragraph 35(a) of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041".

Answer:

(a) APF has not, as yet, completed its discovery or other investigation as to the validity or unenforceability of the patent in suit against APF. However, in addition to the reasons other than those stated in response to Interrogatory No's 1 through 4 hereof as of this date. It is the position of APF that by the time in 1976, that APF received notice from Magnavox of alleged patent infringement on home video games, APF had purchased from General Instruments and others components which were essential to the manufacture of video games. APF was advised by General Instruments that it was negotiating with Magnavox in an attempt to obtain a license and, thus, APF would be shielded from any liability with

activities and its inducement of others to enter into the television game business, Plaintiffs to this action have delayed and continue to delay in taking any action with respect to General Instruments to the prejudice of those who had purchased circuit chips for manufacturing TV games from General Instrument and such action represents laches, estoppel and acquiescence with respect to the enforceability of the patent in suit against APF, one of the purchasers of said circuit chips.

(b) See Answer to Interrogatory No. 6(a).

INTERROGATORY NO. 6:

Identify each and every television game product which defendant has manufactured, used, and/or sold by stating its model or type number, stating the date on which defendant first began to manufacture and/or sell that model or type number, stating the date on which defendant last manufactured and/or sold that model or type number, identifying the manufacturer(s) of and the party(ies) from whom defendant purchased that model or type number, identifying the present employees of defendant having the greatest knowledge of the operation of the electrical circuitry of that model or type number, identifying the person or persons responsible for deciding which game or games were included in that model or type number, describing the game or games played thereon as they appear to the player, and stating for each calendar or fiscal year defendant's sales volume of that model or type number in terms of units and dollars.

Answer:

Defendant APF objects to this Interrogatory as being overly broad since it identifies each and every "television game product" which Defendant has manufactured. It is noted that Defendant has manufactured television products which are not charged with infringement of the patent in suit and, thus, the question is unduly broad as presented. Furthermore, with respect to the model or type

numbers of those video games sold by APF, documents produced in response to Magnavox' and Sanders' request for production of documents in litigation No. 79C1129 pending in the United States District Court for the Southern District of New York evidence all model or type numbers sold by Defendant APF over the past years that are believed to be in issue. Finally, the sales volume in terms of units and dollars of any television game product is confidential business information and is believed by Defendant to only be relevant to the issue of damages. It is the understanding of APF that the issue of liability will be bifurcated from the issue of damages and, hence, any information with respect to damages will not be provided by APF since a trial on the issue of liability will make the production of such information unnecessary.

INTERROGATORY NO. 7:

(a) Does defendant contend that the manufacture and/or sale of any television game product identified in defendant's response to interrogatory 6 hereof is not an act of infringement of, contributory infringement of, or inducement to infringe any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 of the patent in suit for any reason other than the alleged invalidity or unenforceability of the claim or the patent in suit? If so, state specifically with respect to each such claim each and every reason, ground, or basis known to defendant to support such contention including a statement of any language of the claim which defendant contends is not met by the television game product, and if defendant asserts there is any estoppel with respect to the stated language, specifically identify each and every act, fact, or occurrence and each limitation, interpretation, admission, representation, proceeding, argument, amendment, or other item which defendant contends resulted in any such estoppel.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, state specifically with respect to each of the patent claims referred to in subparagraph (a) of this interrogatory each and every reason, ground, or basis known

to defendant to support the contentions of paragraph 17 of "Amended Answer and Counterlcaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041", and specifically identify each and every "proceeding", "admission", or "representation" referred to in paragraph 18 of the "Amended Answer and Counterlcaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041", which defendant contends resulted in any estoppel alleged in said paragraph 18, and identify the language of the claims referred to in subparagraph (a) of this interrogatory to which each such "proceeding", "admission", or "representation" related.

Answer:

(a) Defendants have not completed their discovery or other investigation as to the infringement of, or contributory infringement of, or inducement to infringe any of the claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 of the patent in suit and, hence, cannot provide a specific answer with respect thereto at this time. However, one contention of APF, as of this date, is that the term "distinct motion" is utilized in all of the claims alleged to be infringed by Plaintiffs is vague and indefinite and is incapable of a specific interpretation that would permit an understanding of what products do and do not come within the scope of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 of the patent in suit.

(b) See Answer to Interrogatory No. 7(a).

INTERROGATORY NO. 8:

Identify each person whom defendant expects to call as an expert witness at the trial in this civil action and as to each expert witness state the subject matter or subject matters on which he is expected to testify, the substance of the facts and opinions as to which the expert is expected to testify, and summarize the grounds for each such opinion; and identify each person whom defendant has retained or specially employed in anticipation of this civil action and/or in preparation for trial in this civil action.

Answer:

Plaintiff has not as yet identified the experts that it intends to utilize at trial in this Civil Action. However, as to each witness it will identify, it will provide Plaintiffs with an explanation of the subject matter on which these experts are expected to testify.

INTERROGATORY NO. 9:

(a) If defendant contends that plaintiffs are not entitled to recover from defendant for infringement of the patent in suit for any reason, ground, or basis not stated in defendant's response to interrogatories 1-5 and 7 hereof, state fully and explicitly each such other reason, ground, or basis and identify each document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, state fully each reason, ground, or basis known to defendant to support the contentions of paragraphs 21 and 22 of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041", and identify each document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis and identify each document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

Answer:

(a) See Answer to Interrogatory No. 5(a).

(b) See Answer to Interrogatory No. 5(a).

INTERROGATORY NO. 10:

Has defendant given or received any indemnity agreements relating to or including claims or charges of patent infringement of the patent in suit? If so, and separately as to each such indemnity agreement, identify the parties other than defendant to the agreement; state the date such indemnity agreement was entered into and the dates, if any, such indemnity agreement was terminated or modified; state the full and complete terms of such indemnity agreement and any modifications thereto.

Answer:

APF objects to this Interrogatory as not being relevant to any issues of liability presented in this proceeding. Moreover, based upon APF's understanding that the issues of liability and damages will be bifurcated, to the extent that an indemnity agreement may have been granted to others, APF will produce this information if Plaintiffs can establish liability with respect to any of its specific claims that such indemnities were addressed to.

INTERROGATORY NO. 11:

Identify each and every document, act, fact, or occurrence known to defendant supporting the allegations of paragraphs 35(b) and (c) of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78 C 5041".

Answer:

The acts which support the allegations in paragraphs 35(b) and (c) of the "Amended Answer and Counterclaims of APF Electronics, Inc. to the Amended Complaint in Civil Action No. 78C5014", are the licensing provisions being offered by Plaintiffs to Defendants that manufacture video games that are capable of playing more than one game by reason of the micro-cassette inserted therein. By assessing a royalty rate upon the sale of the game console, which console can be used for a substantial non-infringing purpose, Plaintiffs have attempted to tie in the sales of patented television game consoles to potentially patentable cassettes. Such an arrangement represents an attempt to tie in the sales of unpatented television games to the sale of potentially patentable micro-cassettes and represents an effort to Plaintiffs to broaden their

monopoly to unpatentable video games. The occurrences known to Defendant APF that support the above allegation represents negotiations between Plaintiffs and Defendants with respect to potential licensing of video games under the patent in suit, which negotiations and the substance thereof will be further established through additional discovery of Plaintiffs by APF herein.

INTERROGATORY NO. 12:

Identify each and every television gaming or other apparatus of plaintiff Magnavox which defendant contends the manufacture, use, sale, and/or offer of sale of which is or was an act of infringement (whether direct, contributory, or induced) of U.S. patent 3,135,815, and as to each such television gaming or other apparatus:

(a) State which claims of U.S. patent 3,135,815 defendant contends is or was infringed by making, using, selling, and/or offering for sale such apparatus.

(b) State the date on which defendant first learned that such apparatus was being made, used, sold, and/or offered for sale.

(c) State the date on which defendant first learned that such apparatus was being made, used, sold, and/or offered for sale by plaintiff Maganvox.

(d) State the date on which defendant first believed that the making, using, selling, and/or offering for sale of such apparatus constituted an act of infringement of U.S. patent 3,135,815.

(e) State the date on which Messerschmit Bolkow-Blohm GmbH, its predecessor (by change of name) Bolkow-Entwicklunger, K.G. or any other predecessors in interest of defendant in U.S. patent 3,135,815 (hereinafter collectively referred to as "MBB") first learned that such apparatus was being made, used, sold, and/or offered for sale.

(f) State the date on which MBB first learned that such apparatus was being made, used, sold, and/or offered for sale by plaintiff Magnavox.

(g) State the date on which MBB first believed that the making, using, selling, and/or offering for sale of such apparatus constituted an act of infringement of U.S. patent 3,135,815.

Answer:

(a) One or more claims including claim 3 of U.S. Patent No. 3,135,815 read on the ODYSSEY Model 1TL200-BK12 video game manufactured by Magnavox. With respect to other video games being manufactured by Magnavox, which may infringe U.S. Patent No. 3,135,815, APF is still waiting for Defendants to provide it with copies of schematics with respect to all video games manufactured by Magnavox so that a specific determination with respect to other video games can be made.

(b) Defendants did not learn, until 1980, that Defendants were infringing U.S. Patent No. 3,135,815.

(c) See Answer to Interrogatory No. 12(b)

(d) See Answer to Interrogatory No. 12(b)

(e) Do not know.

(f) Do not know.

(g) Do not know.

INTERROGATORY NO. 13:

Has defendant APF or any person or party known to defendant conducted or had conducted any study of the validity of U.S. patent 3,135,815 or any search for prior art relating to U.S. patent 3,135,815? If so, as to each such search or study:

(a) Identify the individual or individuals that conducted such search or study, the party or parties, if any, that requested such search or study, and the time when such search or study was conducted.

(b) Identify all matters or items of prior art developed by or considered in such search or study.

Answer :

- (a) No.
- (b) None.

INTERROGATORY NO. 14:

With respect to the acquisition by defendant of U.S. patent 3,135,815:

(a) State the date upon which defendant first learned of the existence of said patent.

(b) State the date upon which plaintiff first gave any consideration to acquiring any interest, ownership, right, or title in, or license under, U.S. patent 3,135,815.

(c) State the date of each communication between defendant or any representative thereof and MBB or any representative thereof which concerned or related to the acquisition or potential or possible acquisition by defendant of any interest, ownership, right, or title in, or license under U.S. patent 3,135,815, identify the persons who were parties to each such communication, identify all documents constituting, recording, memorializing, or made during such communications, and state the substance of such communication.

(d) Identify each document by which defendant acquired any interest, ownership, right, or title in, or license under U.S. patent 3,135,815 or by which such interest, ownership, right, title, or license was altered or modified, and state the consideration given by any party to such documents.

(e) Identify the personnel of defendant and MBB primarily involved in defendant's acquisition of U.S. patent 3,135,815.

Answer:

- (a) February, 1980.
- (b) May 15, 1981.
- (c) See documents produced in response to request to produce.
- (d) Assignment of U.S. Patent No. 3,135,815 recorded in the United States Patent and Trademark Office.

(e) Martin Lipper, Fritz Spiegel, Dr. Martin Turk and Joachim Hermann.

INTERROGATORY NO. 15:

(a) Has defendant ever made, used, or sold any apparatus covered by U.S. patent 3,135,815 or any corresponding foreign patent? If so, identify each and every such apparatus.

(b) Has MBB ever made, used, or sold any apparatus covered by U.S. patent 3,135,815 or any corresponding foreign patent? If so, identify each and every such apparatus and state in which country or countries each such apparatus was made, used, or sold.

(c) Has any party other than defendant or MBB ever made, used, or sold any apparatus covered by U.S. patent 3,135,815 or any corresponding foreign patent? If so, identify each and every such apparatus and state in which country or countries each such apparatus was made, used, or sold.

(d) Does defendant contend that the invention of U.S. patent 3,135,815 was a commercial success? If so, state for each calendar of fiscal year, the quantity of each apparatus identified in defendant's response to subparagraph (a)-(c) of this interrogatory sold by defendant, MBB, or any other party and the dollar volume of sales of each such apparatus.

Answer:

(a) No determination has been made with respect to whether APF ever made, used or sold any apparatus covered by U.S. Patent No. 1,135,815.

(b) Roland System identified in documents produced in accordance with this Interrogatory.

(c) Do not know.

(d) Yes, commercial success of the invention of U.S. Patent No. 3,135,815 is evidenced by commercial success of television games.

INTERROGATORY NO. 16:

(a) Has defendant ever asserted, either in a legal action or otherwise, that any party other than plaintiff Magnavox has infringed U.S. patent 3,135,815? If so, identify each such party and state the date such assertion was first made as to that party, identify the apparatus of each such party which defendant contended the making, using, selling, or offering for sale of which constituted an act of infringement of that patent, and identify all documents constituting or relating to any such assertion of infringement and the resolution thereof.

(b) Has defendant ever offered any other party any license, release, or interest under U.S. patent 3,135,815? If so, identify each such party, identify all documents constituting or relating to any such offer, and state the terms of any such offer.

(c) Has defendant ever granted any other party any license, release, or interest under U.S. patent 3,135,815? If so, identify each such party, identify all documents constituting or relating to any such grant, and state the terms of any such license, release, or interest.

(d) Did MBB ever assert, either in a legal action or otherwise, that any party infringed U.S. patent 1,135,815? If so, identify each such party and state the date such assertion was first made as to that party, identify the apparatus of each such party which MBB contended the making, using, selling, or offering for sale of which constituted an act of infringement of that patent, and identify all documents constituting or relating to any such assertion of infringement and the resolution thereof.

(e) Did MBB ever offer any party other than defendant any license, release, or interest under U.S. patent 3,135,815? If so, identify each such party, identify all documents constituting or relating to any such offer, and state the terms of any such offer.

(f) Did MBB ever grant any party other than defendant any license, release, or interest under U.S. patent 3,135,815? If so, identify each such party, identify all documents constituting or relating to any such grant, and state the terms of any such license, release, or interest.

Answer:

(a) No.

(b) Yes. See documents produced in accordance with

request to produce.

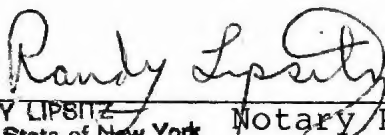
- (c) See Answer to Interrogatory No. 16(b).
(d) Other than Plaintiff Magnavox, no.
(e) No.
(f) No.

APF ELECTRONICS, INC.

By:


Its Agent

Sworn to and subscribed before me
this 9th day of December, 1981.


RANDY LIPSITZ
Notary Public, State of New York
No. 31-4746754
Qualified in New York County
Commission Expires March 30, 1983

As to the Objections:


Attorney of Record